Federal Court Cour fédérale

Date: 20241007

Docket: IMM-10237-23

Citation: 2024 FC 1576

Ottawa, Ontario, October 7, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

DULCE VANESSA LECONA GOMEZ
NATALIA VALENTINA HERNANDEZ LECONA
MARIA FERNANDA HERNANDEZ LECONA
ALISON ALEXIA HERNANDEZ LECONA
OSCAR IVAN HERNANDEZ VERGARA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the Immigration and Refugee Protection Act [IRPA], the Applicants are seeking a Judicial Review of the rejection of their refugee protection appeal by the Refugee Appeal Division [“RAD”] of the Immigration and Refugee Board of Canada [“IRB”].

[2] The Applicants consist of a family from Mexico. They allege that they fear the Union Tepitio (UT), who in conjunction with agents from the Gustavo A. Madero municipality in Mexico City, extorted them at their business between July 2014 and October 2017. On one occasion, one of the Applicants was beaten up when he told the money collectors that the amount was too much. The Applicants fled to Canada on October 18, 2017 and made a refugee claim.

[3] The Refugee Protection Division [“RPD”] found the Applicants to be generally credible but rejected their claims pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (“IRPA”) by written decision on March 20, 2023. It found the determinative issue to be a viable internal flight alternative [“IFA”] to Mérida, Yucatán.

[4] The RAD decision, which is the subject of this Judicial Review, dismissed the appeal and confirmed the decision of the RPD on August 3, 2023. It too found the determinative factor, pursuant to both sections 96 and 97(1) of the IRPA, to be a viable IFA to Mérida, Yucatán.

II. Decision

[5] I dismiss the Applicants’ judicial review application because I find the decision made by the RAD to be reasonable.

III. Standard of Review

[6] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65* [*Vavilov*]).

IV. Analysis

A. *Legal Framework*

[7] The two-prong test for an IFA is well established. An IFA is a place in an applicant's country of nationality where a party seeking protection (i.e., the refugee claimant) would not be at risk and to which it would not be unreasonable for them to relocate. This is viewed in the relevant sense and on the applicable standard, depending on whether the claim is made under sections 96 or 97 of the IRPA. –When there is a viable IFA, a claimant is not entitled to protection from another country. More specifically, to determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that:

a. the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "balance of probabilities" standard) in the proposed IFA; and

b. in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[8] Once IFA is raised as an issue, the onus is on the refugee claimant to prove that they do not have a viable IFA. This means that to counter the proposition that they have a viable IFA, the refugee claimant has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in light of the circumstances for them to relocate there. The burden for this second prong (reasonableness of IFA) is quite high as the Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164

[*Ranganathan*] has held that it requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); *Ranganathan*; and *Rivero Marin v Canada (Citizenship and Immigration)*, 2023 FC 1504 at para 5.

B. *First Prong: Was the RAD's analysis in finding that the Applicants did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA in the IFA reasonable?*

[9] The Applicants argued that the RAD's finding of the IFA in Merida was largely based on a finding that UT lacked an ongoing interest or motivation to locate the Applicants. In particular, the Applicant relied on the following two paragraphs of the RAD decision to argue that it was unreasonable for the RAD to speculate that the UT lacked motivation because they have not yet harmed the remaining family members in Mexico:

> [23] The RPD considered that the Appellants have been in Canada for roughly five-and-a-half years and testified that their family members in Mexico City have not been targeted by the agents of harm. The RPD found that the agents of harm would reasonably have approached their remaining family members in Mexico City if they were interested in finding the Appellants.
>
> [36] In this case, there is no evidence that the agents of harm have bothered the Appellants' family members in Mexico City during the roughly five-and-a-half years that elapsed after the Appellants fled the country in 2017. I agree with the RPD that this supports a

> finding that the agents of harm are not motivated to track them down in the IFA location.

[10] I disagree with the Applicants' characterization that the RAD speculated to make a finding. In fact, as the Applicants have agreed, once IFA is raised as an issue, the onus is on the Applicants to demonstrate why it is not viable. In this case, based on the country conditions, both the RAD and the RPD agreed that UT had the means of locating those it is sufficiently motivated to find across the country. However, the RAD focused on several factors that undermined the group's motivation. The RAD distinguished the Applicants' particular circumstances with those who triggered a motivation on the part of criminal organizations (at para 37) and agreed with the RPD that the evidence did not point to the existence of a personal vendetta against the Applicants (at para 38). It also looked at the passage of time (para36), and the fact that the other family members were never harmed or contacted (at paras 35, 36), or that the Applicants were victims of regular extortion similar to other businesses (at para 43). With this thorough analysis, which included the fact that no family member was being targeted, the RAD concluded that UT lacked the motivation to track down the Applicants in Merida. This was a reasonable conclusion and was based on the totality of the evidence before the RAD. The RAD's thorough rationale provided a clear chain of reasoning.

[11] Contrary to the Applicants' argument, I do not agree that the RAD was expecting the agents of harm to contact the family. It simply enumerated this as a relevant factor that showed UT lacked ongoing motivation. The Applicants simply did not lead sufficient evidence to discharge their burden of proof on motivation, and confused being called on the insufficiency of evidence with speculation on the part of the RAD. The RAD analysed the relevant evidence and

correctly concluded that the burden lies with the Applicants to show why Merida would not be safe, and that they had not discharged the burden.

[12] I find the RAD's analysis of the first prong of the IFA test to be reasonable.

C. *Second Prong: Was it reasonable for the RAD to conclude that it would be reasonable for the Applicants, in their particular circumstances, to relocate to Merida?*

[13] During the judicial review hearing, the Applicants did not make any submissions on the reasonableness of the second prong. However, in their written materials, they submitted that the RAD's inattention to their indigeneity and medical conditions rendered the decision unreasonable. When asked at the hearing, they were unable to point to the relevant evidence that the RAD had supposedly ignored.

[14] I find that the RAD analysed the evidence reasonably to conclude that it would be reasonable for the Applicants, in their particular circumstances, to relocate to Merida.

[15] The RAD reasons follow a clear chain of reasoning and are reasonable.

V. Conclusion

[16] The Application for judicial review is therefore dismissed.

[17] There is no question to be certified.

JUDGMENT IN IMM-10237-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10237-23
STYLE OF CAUSE:	DULCE VANESSA LECONA GOMEZ et Al. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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